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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/579,118	02/26/2007	Christopher Murphy	PLATYPUS 10969	1358
72960	7590	07/21/2011		
Casimir Jones, S.C. 2275 DEMING WAY, SUITE 310 MIDDLETON, WI 53562			EXAMINER GITOMER, RALPH J	
			ART UNIT 1657	PAPER NUMBER
			MAIL DATE 07/21/2011	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Art Unit: 1657

The RCE Request received 7/5/11 has been entered and claims 98-103, 105, 121 are considered here. No claim amendments are made. Benefit of priority is granted to 2/26/2007.

It appears the point of novelty may be found in present claim 102 directed to liquid crystal optical effects for observing cell movement in the wells where mesogen orientation is changed. All the other claimed features are conventional in this art such as pipettes to introduce precise amounts of liquids into many wells in a plate simultaneously.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Art Unit: 1657

Claims 98-101, 103, 105, 121 are rejected under 35 U.S.C. 103(a) as being unpatentable over the combination of Goldbard in view of Pham.

Goldbard (2008/0187949) entitled "Multiplexed Assays of Cell Migration" teaches in paragraph 20, plates with various compartments for testing cell migration with candidate cell attraction materials. In paragraphs 34-36 cell chemotaxis and invasiveness in microplate wells is shown. In paragraph 52 compounds that act on the migration of cells by promoting it or inhibiting it can be studied. In paragraph 56 the migration region may have any suitable position within a well or sub-well. The migration region may be adjacent the floor or bottom surface of the wells.

The claims differ from Goldbard in that they include a cell seeding device and masked and unmasked portions of plates and wells.

It is conventional in this art to transfer cells and apply them to wells with commercially available pipettes and such devices will not be further considered.

Pham (6,171,780) entitled "Low Fluorescence Assay Platforms and Related Methods for Drug Discovery" teaches in column 2 first full paragraph, various multiwell plate formats from 96 - >3000 wells. In column 10 first full paragraph, multiwell platform formats are discussed. In columns 13-14, the multiwell platform may have opaque portions and where the bottom of the well is not opaque, has a high transmittance and may be circular. In column 14 last paragraph bridging to column 15, the wells can include living cells of various types for cell based assays. In column 28 last full paragraph, testing for therapeutic activity and toxicology of cells is shown.

Art Unit: 1657

It would have been obvious to one of ordinary skill in the art at the time of the invention to perform the method of Goldbard with cells in wells with the masked and unmasked plates of Pham because Pham teaches a number of benefits of masked wells to facilitate observing selected areas without interference from other selected areas. Observing cells in portions of wells by masking portions would have been obvious in view of Pham which makes observation of selected portions easier. Observing the same cells for the same function as taught by Goldbard with any known method for its known function with the expected results would have been obvious.

Claim 102 is rejected under 35 U.S.C. 103(a) as being unpatentable over the combination of Goldbard in view of Pham as applied to claims 98-101, 103, 105, 121 above, and further in view of Abbott.

See the teachings of Goldbard and Pham above.

Claim 102 differs from the above references in that it includes the limitation that the wells orient mesogens.

Abbott (WO 99/63329) entitled "Optical Amplification of Molecular Interactions Using Liquid Crystals" (from the PCT search report submitted) teaches on page 60 under The Device, mesogenic layers are supported by a support layer which can be non-planar. On page 61 first and second paragraphs microscopic and spectroscopic techniques are discussed.

Art Unit: 1657

It would have been obvious to one of ordinary skill in the art at the time of the invention to employ the method of Goldbard and Pham with liquid crystal technology including mesogens because Abbott teaches mesogens improve observing small changes on surfaces and have useful optical properties. Employing a known technology such as liquid crystals for its known function to improve observing small changes with the expected results would have been obvious. No unexpected result is disclosed.

Applicant's arguments filed 7/5/11 have been fully considered but they are not persuasive.

Applicants' response argues that Goldbard suspends a membrane within a well over the bottom surface of the well and the cells are seeded on the membrane and not on the bottom surface of the well as claimed. Pham and Abbott do not disclose a method for confining cells to a predetermined area on the bottom surface of a well. The insert claimed is distinct from a pipette because it contacts the bottom surface of the well and has an opening therein that exposes the bottom surface of the well to define a predetermined area on the bottom surface of the well. When the insert is removed, the cells are confined to a discrete location within the well defined by the opening in the insert. Particularly, the references do not teach leaving the insert in the well following application of cells to the well, removing the insert, and culturing the cells so that the cells are confined to an area defined by the insert.

Art Unit: 1657

It is the examiner's position that applying cells to a well with a device does not lend patentability and is found in numerous references cited herein. Regarding Goldbard specifically, in paragraph 19 the wells are described that permit and restrict cell migration and passive movement of cells. See paragraph 21 which further describes the wells permitting migratory loss of cells from subcompartments and localization of cells to subregions. Pham teaches in column 3 lines 31-34, cells in multiwell plates which are assayed. Pham and Abbott were not cited to teach confining cells to a predetermined area on the bottom surface of a well. A pipette has an opening of predetermined area and when cells in solution are placed in a well with a pipette, the cells are inherently confined to a discrete location within that well. The claims are not limited to leaving a pipette in the well following application of cells to the well nor culturing the cells in the presence of the pipette so that the cells are confined to an area defined by the pipette.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

Art Unit: 1657

the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ralph Gitomer whose telephone number is (571) 272-0916. The examiner can normally be reached on Monday - Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jon Weber can be reached on (571) 272-0925. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Ralph Gitomer/
Primary Examiner, Art Unit 1657

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Primary Examiner
Art Unit 1657